

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

KEVIN KOELZER,

Plaintiff,

v.

GRAND RAPIDS POLICE OFFICERS,
EVAN SAXE, MICHAEL REED, COLE
HOYER, and DEREK HALL, in their
individual capacities, Jointly and
Severally,

Defendants.

**DEFENDANTS REED, SAXE, HOYER,
AND HALL'S MOTION FOR
RECONSIDERATION OF THE OPINION
AND ORDER [ECF 131]**

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**DEFENDANTS REED, SAXE, HOYER, AND HALL'S MOTION FOR
RECONSIDERATION OF THE OPINION AND ORDER [ECF 131]**

NOW come Defendants, Grand Rapids Police Officers Evan Saxe, Michael Reed, Cole Hoyer, and Derek Hall, by and through their attorneys, Cummings, McClorey, Davis & Acho, P.L.C., and for their Motion for Reconsideration state:

1. Plaintiff Kevin Koelzer seeks to recover damages under 42 U.S.C. § 1983 asserting violations of his constitutional rights arising out of his arrest on April 28, 2018.

2. On August 22, 2022, this Court issued an Opinion and Order Granting in part and denying in Part Defendants' Motion for Summary Judgment. [ECF 133, PageID.2085].

3. In denying the Defendant Officers' Motion for Summary Judgment on Plaintiff's false arrest and excessive force claims, this Court held "a 'resisting or obstructing arrest' charge must be accompanied by some underlying offense to establish that the arrest was indeed lawful" [ECF 131, PageID.2089, 2097-99] and "a resisting arrest charge, on its own, is not valid without some underlying offense supporting the arrest in the first place." [fn 4, PageID.2089-90].

4. The Court denied Defendants qualified immunity from Plaintiff's unlawful arrest claim, stating "Officer Defendants violated Plaintiff's Fourth Amendment protections by arresting him for 'resisting and obstructing arrest' without first possessing a lawful reason to arrest Plaintiff." [PageID.2093].

5. No Michigan Court has interpreted Mich.Comp.Laws § 750.81(d) or the Grand Rapids ordinance on resisting, obstructing, or failing to obey a police officers as requiring probable cause to arrest for some other offense.

6. The ruling is a clear and palpable error of law. Correction of the ruling will result in a different disposition of this case. Defendant Officers are entitled to summary judgment and qualified immunity from Plaintiff's false arrest claim based on the facts as stated in the Court opinion.

7. Manifest injustice will result in failing to provide full faith and credit to the state court's prior ruling that Plaintiff resisted and interfered with officer's lawful attempts to handcuff and frisk Plaintiff.

8. The Court's excessive force analysis is also premised on the erroneous interpretation of Michigan's R&O laws. Defendants suffer manifest injustice because the use of force analysis is premised on legally erroneous review of the facts.

9. Defendants did not have the opportunity to address this matter of statutory interpretation in prior briefing. Plaintiff did not assert these issues in his response brief. The interpretation that R&O statute requires an underlying arrestable offense was raised, for the first time, in the Court's Opinion and Order.

10. The motion for reconsideration is timely filed within 28 days after entry of the Opinion. Fed.R.Civ.P.59(e). ***Huff v. Metropolitan Life Ins. Co.***, 678 F.2d 119, 122 (6th Cir.1982) ("The district court properly treated the motion to reconsider as a motion under Rule 59 to alter or amend judgment.").

11. Pursuant to Local Rule 7.1 (d), on September 1, 2022 undersigned counsel emailed Plaintiff to ascertain whether this motion will be opposed. No Response was received.

WHEREFORE, for the reasons stated more fully in the accompanying brief, Defendants respectfully request that this Court grant their Motion for Reconsideration.

Dated: September 7, 2022

Respectfully submitted,

CUMMINGS, McCLOREY, DAVIS & ACHO, P.L.C.

/s/ Kristen Rewa

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